

Decision 03-02-058 February 27, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Startec, Inc. (U-5604-C), Startec Global Operating Company, Startec Global Licensing Company and Allied Capital Corporation for Approval to Transfer Control of Startec, Inc. to Allied Capital Corporation.

Application 02-11-009
(Filed November 5, 2002)

O P I N I O N

Summary

This decision grants the joint application of Startec, Inc. (Startec), its wholly owned subsidiaries Startec Global Operating Company (Startec Operating) and Startec Global Licensing Company (Startec Licensing), and Allied Capital Corporation (Allied) for approval of the transfer of control of Startec to Allied.

Parties to the Transaction

Startec is a Delaware corporation authorized to do business in California. Its principal place of business is 1151 Seven Locks Road, Potomac, Maryland 20854. By Decision (D.) 96-04-078 and D.96-10-060, Startec was granted a certificate of public convenience and necessity (CPCN) to operate in California as a resale provider of interexchange services.

Allied is a publicly owned Maryland corporation headquartered in Washington, D.C. As a business development company, it provides investment

capital to private and undervalued public companies. Its principal place of business is 1919 Pennsylvania Avenue, NW, Washington, DC 20006.

Proposed Transaction

Startec and its wholly owned subsidiaries, Startec Operating and Startec Licensing, filed for bankruptcy on December 14, 2001, under Chapter 11 of the United States Bankruptcy Code. Under the terms of a Debtors' Joint Plan of Reorganization filed with the United States Bankruptcy Court for the District of Maryland (Greenbelt Division) on June 14, 2002, Startec, Startec Operating and Startec Licensing will be reorganized and reincorporated as new Delaware corporations, with the reorganized Startec Operating and Startec Licensing continuing to be wholly owned subsidiaries of Startec. Startec Licensing will provide all intrastate and interstate domestic services and will hold the licenses and authorizations required for those services. Under the reorganization plan, Allied will obtain a controlling interest in Startec, Startec Operating and Startec Licensing.

The applicants represent that the transfer of control of Startec to Allied is in the public interest as it will provide Startec, Startec Operating and Startec Licensing with the best opportunity to continue providing domestic services to customers in California as well as access to the financial resources needed to introduce new products and services.

The applicants also represent that the transaction will be transparent to customers. There will be no change in the name or management of Startec, Startec Operating and Startec Licensing. Customers will continue to receive service under the same rates, terms, and conditions after the transaction is approved.

Discussion

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since Startec possesses a CPCN to operate as a resale provider of interexchange telecommunications services within California, we will apply the requirements for such authority to Allied.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a resale provider of interexchange service must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm’s start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Allied provided a copy of its latest Form 10-Q that is filed with the Securities and Exchange Commission. That document includes financial information that demonstrates Allied has sufficient resources to meet our financial requirements. Since under the proposed reorganization, Startec, Startec

Operating and Startec Licensing will continue to operate under the same management, we find that our requirement for technical expertise is satisfied.

The transaction will improve Startec's access to capital. In addition, it will be transparent to customers. Therefore, the proposed transaction is not adverse to the public interest.

As discussed above, Allied has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

Procedural Matters

In Resolution ALJ 176-3101, dated November 21, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and David Fukutome is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. By D.96-04-078 and D.96-10-060, Startec was granted a CPCN to resell interexchange services.
2. Under the terms of a Debtor's Joint Plan of Reorganization filed with the United States Bankruptcy Court for the District of Maryland (Greenbelt Division)

on June 14, 2002, Allied will gain a controlling interest in Startec and its wholly owned subsidiaries Startec Operating and Startec Licensing.

3. There will be no change in the name or management of Startec, Startec Operating or Startec Licensing as a result of the transaction.

4. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.

5. Allied has sufficient financial resources to meet the Commission's requirements to provide resold interexchange services.

6. Allied possesses the necessary technical expertise required by the Commission.

7. Notice of this application appeared on the Commission's Daily Calendar on November 12, 2002.

8. There were no protests to this application.

9. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a resale provider of interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Allied meets the Commission's requirements for the issuance of a CPCN to provide resold interexchange telecommunications services.

3. The transaction is not adverse to the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854, the joint application of Startec, Inc. (Startec), its wholly owned subsidiaries Startec Global Operating Company and Startec Global Licensing Company and Allied Capital Corporation (Allied) for approval of the indirect transfer of control of Startec to Allied is approved.

2. Application 02-11-009 is closed.

This order is effective today.

Dated February 27, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners